

REMARKS

The above amendments and following remarks are submitted under 37 C.F.R. 1.116 in response to the Final Official Action of the Examiner mailed May 20, 2005. Having addressed all objections and grounds of rejection, claims 1-22, being all the pending claims, - are now deemed in condition for allowance. Entry of this amendment and reconsideration to that end is respectfully requested.

Claims 1-22 have been rejected under 35 U.S.C. 103(a) as being obvious over Cool ICE User's Guide Release 1.0 (hereinafter referred to as "Cool ICE") in view of an article entitled "A Distributed Real-Time Database for Heterogeneous Computer Control Systems", by Madan et al (hereinafter referred to as "Madan"). This ground of rejection is respectfully traversed for failure of the Examiner to make a *prima facie* case of obviousness.

To make a *prima facie* case of obviousness, MPEP 2143 requires the Examiner to provide evidence and argument showing: 1) motivation to make the alleged combination; 2) reasonable likelihood of success of the alleged combination; and 3) all claimed elements within the alleged combination. The Examiner has failed to make any of these three required showings. Therefore, because the Examiner has not made a *prima facie* case of obviousness, Applicants need not and indeed cannot offer appropriate evidence and argument in rebuttal.

In the only apparent attempt to show motivation, the Examiner states:

It would have been obvious to one of ordinary skill at the time of the invention to have combined Madan et al with Cool ICE User's Guide because Madan et al is concerned with extending the construct of proprietary database systems into open systems that can handle divers tasks. (Emphasis added)

In other words, the Examiner finds motivation alleging that "Madan et al is concerned with extending the construct of proprietary database systems into open systems that can handle divers tasks".

Quite apart from that this statement is not found within the prior art, it does not make any sense. To the extent understood, Cool ICE is in itself a "proprietary data base management system" which is extended into "open systems" and "handles diverse tasks". Because Cool ICE already offers all of the featured alleged to motivate the alleged combination with Madan, there is no motivation to make the combination as a matter of law.

The Examiner has completely ignored her obligation to show "reasonable likelihood of success". Most probably this is because there is no reasonable likelihood of success of combining these incompatible approaches. As per the title, Madan is a "real-time" system". Cool ICE, on the other hand, is a batch (and/or demand batch) system. Madan relies upon something called "kernals" residing in a plurality of "nodes". Cool ICE has no "kernals" and no plurality of "nodes". These and the other incompatibilities are so great, that one of ordinary skill in the art would not even consider that alleged combination.

As to the requirement of MPEP 2143 to show all claimed elements within the alleged combination, claim 1 and all other pending claims have been amended to require that the claimed "unavailability message" actually notify the human user of the unavailability of the claimed data base management system and that the claimed "service request" will not be honored. For example, though Figure 5 of Madan lists the six (6) different messages defined in the system, none is the claimed "unavailability message".

The differences in approach between the claimed invention and Madan can also be illustrated by Madan, paragraph 7. The section begins:

Since (sic) the RTDDBMS has to serve a Real-Time environment, a Time-Out mechanism has (sic) provided at appropriate places.....Similarly, if at transaction initiating point the status of transaction is not received from the serving kernel within time out period the transaction is aborted.

Therefore, unlike Applicants' claimed invention, if Madan has an unavailability (or failure) situation, the "transaction is aborted". Furthermore, unlike Applicants' claimed invention, no unavailability message is provided. Instead, the system is simply permitted to "time-out". The difference in handling the same unavailability situation is due in large part to the "real-time" nature of Madan and the batch environment of Applicants' invention.

The rejection of claim 1 as amended, and all claims depending therefrom is respectfully traversed.

Claims 2-5 depend from claims and add further limitations. Instead of addressing Applicants' claimed invention as required by law, the Examiner simply states:

Regarding claims 2-5; a repository for storing said unavailability message [note Madan et al., figure 5; also note design of system tables at page 426].

Not only does the Examiner refuse to address the claimed invention, she cites Fig. 5 as allegedly showing a "repository" and page 426 to show "design of system tables. Fig. 5 has no "repository" and Madan has no page 426. The rejection of claims 2-5 is respectfully traversed for failure of the Examiner to examine claims 2-5 in accordance with controlling law.

Instead of examining claims 6-22, which have differing statutory and judicial bases of patentability as well as differing claim limitations, the Examiner simply states:

The limitations of claims 6-22 have been addressed above in claims 1-5, except for the following: transferring an unavailability message to said user terminal if said determining step determines data base management system is not currently capable of honoring said server request [note: Madan page 435 through 436 the Kernel checks the nodes to see which is available and transfer appropriate transaction].

In addition to this statement being legally and grammatically incorrect, to the extent understandable, it is clearly erroneous. The rejection of claims 6-22 is respectfully rejected as being improperly examined.

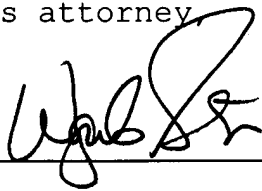
Having thus responded to each objection and ground of rejection, Applicants respectfully request entry of this amendment and allowance of claims 1-22, as amended, being the only pending claims.

Respectfully submitted,

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By his attorney,

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